Court No.2

Writ Petition No. 509 of 2001 (S/S)

Subhash Chandra …….. Petitioner

Vs.

Senior Supdt. of Police,
Dehradun …… Respondent

Hon. P.C. Verma, A.C.J.

Heard Sri Arvind Vashistha, learned counsel for the petitioner and Sri B.D. Kandpal, learned Standing Counsel.

This writ petition has been filed seek a writ in the nature of certiorari to quash the impugned order dated 1.7.2000, by which petitioner has been dismissed from service.

Admittedly, no departmental inquiry was held on the ground that the inquiry was not reasonably practicable. Reasons recorded for not holding the departmental inquiry being not reasonably practicable, are stated thus:

> ''चूंकि उक्त गवाहान अभियुक्त नदीम के घर के आसपास के व उसके निकट सम्बन्धी हैं। अतः इन गवाहों को अभियुक्त नदीम जिसके सम्बन्ध इस आरक्षी सुभाष चन्द्र से दोस्ताना हैं, आरक्षी सुभाष चन्द्र के विरूद्ध गवाहनी देने में प्राणों का संकट उत्पन्न हो सकता है, क्योंकि नदीम एक हिंसक प्रवृत्ति का व्यक्ति है, जिसका चालान धारा 302 भा0दं0वि0 में पूर्व में किया जा चुका है, जिसका विचारण चल रहा है। इसी मुकदमे में अभियुक्त नदीम जेल में था तथा इसी मुकदमे की हिरासत से अभियुक्त आरक्षी सुभाष चन्द्र के सहयोग से फरार हुआ था।
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> अतः आरक्षी सुभाष चन्द्र के उपरोक्त कृत्य दुराचरण की उस सीमा तक है कि पुलिस बल में ऐसे दुराचारी आरक्षी के रहते हुए पुलिस बल की छवि निरन्तर धूमिल होती है तथा ऐसे आरक्षी के कारण ही अभियुक्त को प्रोत्साहन मिलता है। इसके अतिरिक्त न्यायिक प्रक्रिया में भी बाधार उत्पन्न होती है। ऐसी स्थिति में इस आरक्षी को पुलिस बल में बनाये रखना किसी भी दृष्टि से शासकीय हित मे नही है।
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> चूंकि इस आरक्षी के विभागीय विचारण से सम्बन्धित इस प्रकरण में मौके के उक्त साक्षियों को प्राणों का संकट उत्पन्न हो सकता है तथा इस बात की भी पूरी सम्भावना है कि यदि इस आरक्षी का उपरोक्त आरोपों में विभागीय विचारण कराया जाता है तो विचारण हेतु मौके के वर्णित साक्षी जो कि अभियुक्त नदीम के घर के आसपास के व्यक्ति तथा उसके निकट सम्बन्धी है, यह व्यक्ति आरक्षी सुभाष चन्द्र के विरूद्ध नदीम के भय के कारण साक्ष्य प्रस्तुत करने में सहयोग प्रदान नहीं करेंगे। ऐसी परिस्थितियों में इस आरक्षी का विभागीय विचारण कराया जाना व्यवहारित प्रतीत नहीं होता है।
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> अतः प्रकरण से सम्बन्धित उपलब्ध अभिलेखों एवं वर्णित परिस्थितियों के आधार पर मैं के0के0 सक्सेना, वरिष्ठ पुलिस अधीक्षक, देहरादून आरक्षी 95 ना0पु0 सुभाष चन्द्र (निलम्बित) का नियुक्ति अधिकारी होने के कारण उ0प्र0 अधीनस्थ श्रेणी के पुलिस अधिकारियों की (दण्ड एवं अपील) नियमावली 1991 के नियम 8 (2) (ख) मे प्रदत्त अधिकारों का प्रयोग करते हुए निलम्बित आरक्षी 95 ना0पु0 सुभाष चन्द्र को पुलिस बल से पदच्युत करने का आदेश पारित करता हूँ''

Sri B.D.Kandpal, learned counsel for the State has relied upon on the judgment of the apex Court rendered in Indian Railway Construction Co. Ltd. Vs. Ajay Kumar (2003) 4 Supreme Court Cases 579 and submitted that since there was threat to the life of witnesses and even to the qinuiry officer in view of the contacts of the petitioner with the criminals and his criminal attitude, therefore, authorities have rightly dispensed with the inquiry, holding that the inquiry was not reasonably practicable as the witnesses are relatives of the accused Nadeem and reside near his house and the petitioner has friendship with the accused Nadeem.

Para 12 of the judgment of the apex Court reads as under:

"It is fairly well settled that the power to dismiss an employee by dispensing with an enquiry is not to be exercised so as to circumvent the prescribed rules. The satisfaction as to whether the facts exist to justify dispensing with enquiry has to be of the disciplinary authority. Where two views are possible as to whether holding of an enquiry would have been proper or not, it would not be within the domain ofr the Court to substitute its view for that of the disciplinary authority as if the Court is sitting as as appellate authority over the disciplinary authority. The contemporaneous circumstances can be duly taken note of in arriving at a decision whether to dispense with an enquiry or not. What the High Court was required to do was to see whether there was any scope for judicial review of the disciplinary authority's order dispensing with the inquiry. The focus was required to be on the impracticability or otherwise of holding the enquiry."

In the present case, although the reasons stated above shows that there was perception of threat to the life of witnesses and others including the inquiry officer. Therefore, it is said that it was a relevant factor to hold the departmental inquiry to be reasonably impracticable. In view of the law laid down by the apex Court in para 12 above, if view has been formed by the authority, who is competent to form the view on the basis of some relevant factor, the High Court should not substitute its view.

In para 22 of the judgment the apex Court has held that neither the learned Single Judge nor the Division Bench of the High Court examined the practicability or otherwise of holding the enquiry in the correct perspective. The High Court proceeded on the ground that the order was mala fide.

Learned counsel for the petitioner relying on the case of Jaswant Singh Nerwal Vs. State of Punjab and others-(1991)1 S.C.C. 362 submitted that there is no material on record to establish that the opinion so formed was based on any material. A perusal of the order quoted above itself, shows that the authority has narrated the relation of the petitioner with Nadeem. It has also been mentioned that on 25.4.2000 while the petitioner was posted as Constable in Police Lines, Dehradun, he was deputed for taking the accused persons from Lock Up to Court. The petitioner took accused Nadeem s/o Yusuf r/o Mohalla Gandhigram, P.S.Kotwali, Dehradun to the Court of A.D.J. Dehradun in case crime no. 687 of 1999 under section 302/201,I.P.C. The petitioner produced the accused in the Court and thereafter instead of lodging the accused Nadeem in Lock-up, he went alongwith the accused in plain clothes to his village Gandhigram and left him at his house and gave him an opportunity to abscond, as a result of which the accused, who is wanted in a murder case absconded from the judicial custody. There is mention in the service record of the petitioner that the petitioner has connections with the criminals and that shows his association with the criminals. Association of petitioner with criminals may cause threat perception in the mind of witnesses of departmental enquiry, but enquiry could be held by enquiry officer on the basis of other documents on record.

Learned counsel for the petitioner further submitted that even after holding that the inquiry was not reasonable practicable, the petitioner was not supplied the copy of the proposed punishment order alongwith the order dispensing with the inquiry to show cause as to why he be not dismissed from service. Therefore, dismissal order can not be sustained in view of the law laid down by the apex Court in the case of Union of India Vs. Mohd. Ramzan Khan(1991)1SCC 588. Since in this case, straightway dismissal order has been passed, therefore, the petitioner has been deprived of post decisional hearing as the material has not bee supplied to him to file an appeal. The petitioner could not show cause against the decision to dispense with the inquiry that the inquiry was not reasonable practicable which was based on no material. Therefore, non-issuance of show cause notice for proposed dismissal

order on account of dispensing with the inquiry caused prejudice to the petitioner and since prejudice has been caused on account of non-supply of copy of the proposed punishment prior to the passing of the dismissal order, the order is liable to be set aside in view of the apex Court's judgment in the case of Managing Director, ECIL, Hyderabad and others Vs. B.Karunakaran reported in 1993 4SCC 727.

Learned Standing counsel was directed to produce the record so that it could be seen as to whether there exists material to support the fact which was basis of opinion of authority to hold that the inquiry was not reasonably practicable, but the record was not produced. Learned standing counsel argued on the basis of narration of the facts in the order of dismissal and the counter affidavit has also been filed on the basis of narration of fact in the dismissal order. The documents have not been annexed with the counter affidavit which could support the narration of fact in the order. The State Government could file all the documents available with it to suport narration of facts in view of the categorical denial of such documents in para 9 and 10 of the writ petition. In absence of material evidence in support of facts stated for holding that the enquiry was not reasonable practicable, the decision that the enquiry was not reasonably practicable can not be sustained in the eye of law. The non-supply of copy of the order holding that the enquiry was not reasonably practicable caused prejudice to the petitioner as he was deprived of post decisional hearing and. Therefore, in view of the apex Court judgment in Ramzan Khan's case and B. Karunakaran's case the order of dismissal can not be sustained.

For the reasons recorded above, a writ of certiorari is issued Order dated 1.7.2000 is hereby quashed. However, the authorities may proceed in accordance with law.

(P.C. Verma, A.C.J.)

Dt. 26.06.2003

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